

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

K. CAPOGRECO,

Plaintiff,

No. 2:10-cv-2907 KJN P

vs.

UNKNOWN,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding without counsel, has filed a letter claiming his life is in danger. Plaintiff claims he has “tried 4 times to file an appeal in the prison system, written the Warden and even Internal Affairs for help,” but “no one will listen to [him].” (*Id.* at 1.) It appears plaintiff may seek to file a civil rights action pursuant to 42 U.S.C. § 1983 alleging retaliation.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(b).

1 In this case, plaintiff is housed at Soledad State Prison, and appears to be subject  
2 to threats at that institution, which is in the Northern District of California. Therefore, plaintiff's  
3 claim should have been filed in the United States District Court for the Northern District of  
4 California. In the interest of justice, a federal court may transfer a complaint filed in the wrong  
5 district to the correct district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932  
6 (D.C. Cir. 1974).

7 The court will order this action transferred to the Northern District. However,  
8 because plaintiff alleges his life is in danger, and to expedite his action, this court will also advise  
9 plaintiff as to how to proceed. In order to commence an action, plaintiff must file a complaint as  
10 required by Rule 3 of the Federal Rules of Civil Procedure, and plaintiff must either pay the  
11 required filing fee or file an application requesting leave to proceed in forma pauperis.<sup>1</sup> See 28  
12 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until  
13 an action has been properly commenced. Therefore, plaintiff will be provided the opportunity to  
14 file his complaint in the Northern District, and to submit an application requesting leave to  
15 proceed in forma pauperis or to submit the appropriate filing fee. Plaintiff is advised that the  
16 United States District Court for the Northern District of California will inform him of the  
17 assigned case number once this action is transferred.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. This matter is transferred to the United States District Court for the Northern  
20 District of California.

21 2. Plaintiff is granted thirty days from the date of service of this order to file a  
22 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
23 Procedure, and the Local Rules of Practice; the complaint must bear the docket number assigned  
24 this case; plaintiff must file an original and two copies of the complaint. Plaintiff shall also


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25 <sup>1</sup> If leave to file in forma pauperis is granted, plaintiff will still be required to pay the  
26 filing fee but will be allowed to pay it in installments.

1 submit, within thirty days from the date of this order, the application to proceed in forma  
2 pauperis on the form provided by the Clerk of Court, or the filing fee in the amount of \$350.00.  
3 The complaint and the application to proceed in forma pauperis or the filing fee shall be  
4 submitted to the Clerk of the Court of the United States District Court for the Northern District of  
5 California. Plaintiff is cautioned that failure to comply with this order may result in a  
6 recommendation that this matter be dismissed.

7 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a  
8 civil rights action, and the application to proceed in forma pauperis by a prisoner.

9 DATED: November 2, 2010

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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